IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14383 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMINAGAR CO OP HOUSING SOCIETY THRO.ORGANISOR

Versus

MAMLATDAR & ALT

Appearance:

1. Special Civil Application No. 14383 of 2004

MR YN RAVANI for Petitioner No. 1

Mr. Nagesh Sood, AGP for Respondent No. 1-3

NOTICE SERVED for Respondent No. 2

MR SK PATEL for Respondent No. 4-9

MR.DIPAK B PATEL for Respondent No. 4-5,7-9

MR DIPAK A PAREGI for Respondent No. 6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 09/02/2005

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution of India, the petitioner has challenged the

legality and validity of the judgment and order dated 14.6.2004 passed by the Gujarat Revenue Tribunal ('GRT') in Revision Application No. TEN.BA 756/92 in dismissing the same and confirming the order passed by the Mamlatdar and ALT dated 18.9.1989 in Ganot Case No. 119/89 and also the order passed by the Deputy Collector (Land Reforms), Appeals, Mehsana, dated 1.7.1992 in Appeal No. 401/91.

2. One Shri Ambalal Harjivandas was owner of lands bearing Survey Nos. 252 and 212 of Kalol. The said land were new tenure and restricted lands as the original landowner namely Ambalal Harjivandas was a tenant (Ganotia). It is the case of the petitioner that the heirs of Ambalal Harjivandas applied to the District Collector, Mehsana, for conversion of the land into old tenure land and for Non-Agricultural permission and an order came to be passed by the District Collector for converting the land with Non-Agricultural use permission on 1st December 1981. It is the case of the petitioner that the heirs of Ambalal Harjivandas entered into a sale transaction by registered Sale Deed with regard to land in question on 12th February 1982 and the property in question came to be purchased by one Shri Laxminagar Cooperative Housing Society (Proposed), Kalol {hereinafter referred to as "the proposed society"), through its main organiser, Jugalbhai Raichandbhai Raval and Amrutbhai Chhanabhai Raval (as 'Secretary'). That thereafter necessary entry was mutated in the record of rights being Revenue Entry No. 6776 in favour of the proposed society and a further Entry No. 6778 was mutated for Non-Agricultural use permission on 7th December 1985. The Mamlatdar and ALT, Kalol was of the opinion that there was a breach of Section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948 {hereinafter referred to as "the said Act"). By virtue of the aforesaid transaction between the heirs of Ambalal Harjivandas and the proposed society and on the ground that the transaction was in breach of the provisions of Sections 43, 63 and 64-A of the Act proceedings were initiated by way of Tenancy Case No. 119 of 1989. The Mamlatdar and ALT, Kalol, by order dated 18.9.1989 held the transaction between the heirs of Ambalal Harjivandas and the proposed society as invalid and an order came to be passed in favour of the State under Section 84-C(1) of the Act forfeiting the land to the State Government. Being aggrieved and dissatisfied with the order passed by the Mamlatdar and ALT, Kalol, dated 18.9.1989 in Ganot Case No. 119/1989, Shri Jugabhai Raichandrabhai Raval as Chief Promoter of the proposed Society, preferred Tenancy Appeal No. 401/1991 before the Deputy Collector (Land

Reforms), Appeals, Mehsana, who by his order dated 1.7.1992 dismissed the same on the ground of limitation as the same was filed beyond the period of limitation. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Mehsana, dated 1.7.1992 in Tenancy Appeal No. 401/91, the proposed Society preferred Revision Application No. TEN.BA 56/1992 before the GRT and the GRT by judgment and order dated 14.6.2004 dismissed the said revision application even considering the case of the society on merits rather than remanding the matter to the Deputy Collector who dismised the appeal on the ground of limitation and even considering the submission on behalf of the petitioner that subsequently in the year 2000 the society is already registered, and confirmed the order passed by both the authorities below. Being aggrieved and dissatisfied with the judgment and order passed by the GRT dated 14.6.2004 in Revision Application TEN.BA No. 56/1992, the proposed sciety through one Ishwarbhai Ramdas Patel has preferred the Special Civil Application under Article 227 of the Constitution of India.

3. It appears from the record that it was submitted by the proposed Society that subsequently the Society itself is registered in the year 2000 more particularly on 4.3.2000 and that after purchasing of the said land by the proposed society as the Chief Promotor has already got the land converted into non-agricultural land and therefore the provisions of the Act are not applicable. It is submitted that as the notice under Section 84-C of the Act has been issued after the land being converted for Non-Agricultural use the said notice is void. It was also further submitted that exercise of power by the Mamlatdar under Section 84-C of the Tenancy Act was after unreasonable period of 4 years and he could not have execised suo motu revisional powers after a period of 4 years. It appears from the record that as the GRT found that the transaction in question, by which the society proposed purchased the land, itself is a nullity as the proposed society cannot be said to be a legal entity who could not have purchased the land in question and the contract between the original landowners and the proposed society itself is a nullity. A contention was raised on behalf of the petitioner that subsequently the society itself is registered on 4.3.2000 and therefore considering the provisions of Section 47 of the Registration Act, the same will relate back to the date of sale deed and therefore it cannot be said that the transaction was a nullity. Rejecting the submission on behalf of the petitioner society, the Tribunal held on merits that exercise of powers after 4 years itself

cannot be saidi to be exercising the powers illegally as, as such there is no prejudice to the society as the position of the land in question is not altered. It is also held by the GRT that the subsequent registration cannot cure the defect which was there at the time of executing the sale deed in favour of the proposed society and that admittedly there was a breach of Sections 43, 63 and 64A of the Tenancy Act and therefore the authority has rightly declared the sale transaction as invalid under 84-C(2) of the Act and has rightly forfeited to the State Government. It is also held that the proposed society was not an agriculturist and therefore also there was a breach of Sections 43 and 63 of the Act. Even the GRT has also considered the fact that when the society was proposed there were some persons and when the society is registered there are some other persons. Thus, the original promoters and the present organiser are different and only by giving a label of proposed society the individual has purchased the land in question and the individuals are also not agriculturists and accordingly the GRT dismissed the revision application on merits against which the present petitioner has preferred the Special Civil Application.

4. Shri Yogesh Ravani, learned advocate appearing on behalf of the petitioner society has mainly submitted that in view of the fact that the society is subsequently registered in the year 2000 considering the provisions of Section 47 of the Registration Act the same will relate back to the date on which the registered Sale Deed is executed and therefore the Sale Deed/transaction between the heirs of Ambalal, original landowner and the proposed society cannot be declared as a nullity. As such no other submission has been made on behalf fo the petitioner society. It is further submitted that as such in view of the fact that the proposed society is already registered now it cannot be said that the transaction in question is a nullity and the proposed society could not have purchased the land in question.

5. On the other hand, the learned advocate appearing for the respondents, has supported the orders passed by all the authorities below and has submitted that the orders passed by all the authorities below in forfeiting the land to the State Government under Section 84-C of the Act are in accordance with law. It is submitted by the learned AGP Mr. Sood that in the facts and circumstances of the case Section 47 of the Registration Act will not be applicable. It is further submitted that by subsequent registration of the society the defect which was already there at the time when the sale deed

was executed to the effect that at the relevant time the proposed society itself was non-existent inasmuch as it was not a legal entity unless and until it is registered and that defect will not be cured by subsequent registration. It is therefore submitted that the transaction between the heirs of the original landowner of the society itself was a nullity and as such there was a breach of Section 64-A of the Act and therefore all the authorities below have rightly passed an order under Section 84-C(2) of the Act forfeiting the land to the State Government.

6. Heard the learned advocates appearing for the parties. It is an admitted position that at the relevant time when the land in question came to be sold by Ambalal Harjivandas it was with the Shri Laxminagar Cooperative Housing Society (Proposed), Kalol. As held by this Court in the case of Ramji Mandir Narsinhji & Ors. Vs. Narsinh Nagar Alias Tekri Co.op Housing Society Ltd & Ors.,- reported in 1979 GLR Page 801 in as well as in the case of Jayantilal Hansraj Shah and Others Vs. Hemakuwarben Dolatraj Dave and others, reported in 1996(3)GLR 522 and the decision in the case of Shivalaya Cooperative Housing Soicety vs. Shantaben T. Patel, reported in 2002(1) GLR Page 426, the propsed Cooperative Housing Society not being duly registered as a Cooperative Society cannot enforce a contract in favour of an unregistered Cooperative Society and that unregistered Co-operative Society cannot enter into contract and that suit itself is not maintainable as society itself is not in existence in the eye of law and that the contract entered into by proposed/unregistered Cooperative Society is not a valid contract in the eye of law. The Judgment of this Court in the case of Ramji Mandir Narsinhji & Others (Supra) is confirmed by the Hon'ble Supreme Court of India as reported in 2002(1) GLH 290 by holding that an unregistered cooperative society cannot enter into a contract. Under the circumstances, the transaction, i.e., registered Sale Deed itself dated 12.2.1982 entered into between the heirs of Ambalal and Laxminagar Cooperative Housing Society (Proposed) itself was a nullity which is between the heirs of Ambalal and a non-existent entity as the Proposed Society which is registered was not a legal entity and not in existence unless it is registered. Thus, the submission on behalf of the petitioner society that by subsequent registration of the Cooperative Society the sale transaction dated 12.2.1982 cannot be declared to be a nullity also cannot be accepted.

6.1. It is submitted by Shri Ravani, learned advocate

appearing for the petitioner that considering the provisions of Section 47 of the Registration Act the effect of registration would relate back to execution of the sale deed and therefore the sale deed dated 12.2.1982 could not have been declared as a nullity. The aforesaid argument though seems to be attractive has no substance. Section 47 of the Registration Act deals with a case where the document is already executed between the party but the same is not registered with the registering authority and subsequently it is registered and presented before the appropriate authority for registration, and in that case as per Section 47 of the Registration Act the registration of that document before the registering authority would be relating back to the date of execution of the document. Under the circumstances, the provisions of Section 47 of the Registration Act will not be applicable to the fact situation of the present case. Here, the question is with regard to registration of a cooperative society under the provisions of the Gujarat Cooperative Societies Act where it is required to consider the position prevailing at the time of execution of the sale deed. At the time of execution of the document, admittedly, the society was unregistered and the contract was between the original landowner and the proposed Cooperative Society. As held by this Court, and confirmed by the Hon'ble Supreme Court of India, an unregistered Society cannot enter into a contract as the same is not a legal entity and the same is not in existence unless and until it is registered. Under the circumstances, merely because the society is registered subsequently considering the provisions of Section 47 of the Registration Act, the same will not be relating back to the date of execution of the registered Sale Deed. As such Section 47 of the Registration Act will not be applicable at all. Merely by subsequent registration of the Society under the provisions of the Gujarat Cooperative Societies Act, the defect, which is already there at the time of execution of the Sale Deed, cannot be cured and the transaction in question would not become valid. An identical question came to be considered by the Hon'ble Supreme Court of India in the case reported in 1975(2) SCC Page 685 wherein a company was not registered under the provisions of the Companies Act and it was registered subsequently, and while considering the question with regard to subsequent registration under the Companies Act, the Hon'ble Supreme Court of India has held that by subsequent registration the defect which was already there cannot be cured. Considering the judgment of the Hon'ble Supreme Court of India as cited above, even subsequent registration of the petitioner society will not cure the defect and the transaction which was

already void and a nullity will not become valid by a subsequent registration. In view of this proposition, there is no substance in the argument of the petitioner.

7. For the reasons stated hereinabove,the present Special Civil Application is dismissed. Notice is discharged. Ad-interim relief granted earlier stands vacated forthwith.

7.1. At this stage, Shri YN Ravani, learned advocate appearing on behalf of the petitioner requests to continue the ad-interim relief granted earlier. Considering the facts and circumstances of the case, the ad-interim relief granted earlier, i.e., status-quo qua possession of the land in question, is directed to be continued for a period of eight weeks from today.

[M.R. Shah, J.]

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